

³All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

and entitle the Department to a favorable decision. The following facts as established by the Department's exhibits are undisputed.

Findings of Fact

1. Jones is licensed as an emergency medical technician-basic (EMT-B). His license is and was at all relevant times current and active.
2. On October 25, 2013, in the Circuit Court of St. Louis County, Missouri, Jones waived his right to a jury trial and was thereafter tried and found guilty of the crime of acceding to corruption, in violation of § 576.020,⁴ a Class D felony.
3. Jones was sentenced to serve one year in the St. Louis County Justice Center.

Conclusions of Law

We have jurisdiction to hear the Department's complaint.⁵ The Department has the burden of proving that Jones has committed an act for which the law allows discipline.⁶

The Department argues there is cause for discipline under § 190.165, which states:

2. The department may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate, permit or license required by sections 190.100 to 190.245 or any person who has failed to renew or has surrendered his or her certificate, permit or license for failure to comply with the provisions of sections 190.100 to 190.245 or any lawful regulations promulgated by the department to implement such sections. Those regulations shall be limited to the following:

* * *

(2) Being finally adjudicated and found guilty, or having entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any activity licensed or regulated pursuant to sections

⁴ RSMo 2000.

⁵ Sections 621.045 and 190.165.2.

⁶ *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

190.100 to 190.245, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed[.]

The Department also cites its Regulation 19 CSR 30-40.365, which states:

(2) The department may cause a complaint to be filed with the Administrative Hearing Commission as provided by Chapter 621, RSMo, against any holder of any certificate, permit or license required by the comprehensive emergency medical services systems act or any person who has failed to renew or has surrendered his or her certificate, permit or license for failure to comply with the provisions of the comprehensive emergency medical services systems act or for any of the following reasons:

* * *

(B) Being finally adjudicated and found guilty, or having entered a plea or guilty or *nolo contendere*, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any activity licensed or regulated pursuant to the comprehensive emergency medical services systems act, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed[.]

Jones was convicted of violating § 576.020.1, which states:

A public servant commits the crime of acceding to corruption if he knowingly solicits, accepts or agrees to accept any benefit, direct or indirect in return for:

- (1) His official vote, opinion, recommendation, judgment, decision, action or exercise of discretion as a public servant; or
- (2) His violation of a known legal duty as a public servant.

The Department argues Jones is subject to discipline because he was found guilty of an offense an essential element of which is dishonesty, is one involving moral turpitude, and is reasonably related to the functions or duties of the activity of working as an EMT. We find in favor of the Department with respect to all three claims.

Reasonably Related

Reasonable relation is a low threshold. To relate is to have a logical connection.⁷

According to the information upon which he was indicted, Jones solicited and accepted sex from a female arrestee suspected of driving under the influence of alcohol, in exchange for releasing her without charging her with a crime. At the time of the incidents giving rise to the charge, Jones was employed as a municipal police officer. As an EMT-B, Jones would occupy a similar position of public trust and confidence.

Emergency responders, like police officers, are dispatched to situations and incidents in which they must assume a level of authority over citizens with limited capacity to make decisions or otherwise help themselves; licensees must be worthy of that trust and confidence. Abusing that public trust and confidence by soliciting and accepting a private benefit in exchange for a particular act of discretion is a crime reasonably related to the functions and duties of an EMT-B.

Essential Element

To determine whether an essential element of a crime involves fraud or dishonesty, we do not look at whether Jones had a dishonest or fraudulent intent, but to the elements of the crime. An essential element is one that must be proven for a conviction in every case.⁸ Dishonesty is defined in the dictionary as a lack of integrity, a disposition to defraud or deceive.⁹

Jones displayed an utter lack of integrity in carrying out his responsibilities as a police officer. We agree with the Department that the Class D felony offense Jones committed, acceding to corruption, is a crime having dishonesty as an essential element. We find cause for discipline under § 190.165.2(2) and 19 CSR 30-40.365(2)(B).

⁷ MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1050 (11th ed. 2004).

⁸ *State ex rel. Atkins v. Missouri Bd. of Accountancy*, 351 S.W.2d 483, 485 (Mo. App., K.C.D. 1961).

⁹ MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 333 (10th ed. 1993).

Moral Turpitude

To determine whether a crime involves moral turpitude, we consider the offense rather than the underlying conduct.¹⁰ Moral turpitude is:

an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything “done contrary to justice, honesty, modesty, and good morals.”^[11]

In *Brehe v. Missouri Dep’t of Elementary and Secondary Education*,¹² a case that involved discipline of a teacher’s certificate under § 168.071 for committing a crime involving moral turpitude, the court referred to three classifications of crimes:¹³

- (1) crimes that necessarily involve moral turpitude, such as frauds (Category 1 crimes);
- (2) crimes “so obviously petty that conviction carries no suggestion of moral turpitude,” such as illegal parking (Category 2 crimes); and
- (3) crimes that “may be saturated with moral turpitude,” yet do not involve it necessarily, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (Category 3 crimes).

The court stated that Category 3 crimes require consideration of “the related factual circumstances” of the offense to determine whether moral turpitude is involved.¹⁴ We find that the Class D felony of acceding to corruption is a crime involving moral turpitude. Even if it is not a Category 1 crime, it would be a Category 3 crime. Jones argues we must not look at the underlying conduct in our consideration of whether the crime for which he was convicted is one involving moral turpitude, but we reject his argument as without legal support.

¹⁰ *Chanmouny v. Ashcroft*, 376 F.3d 810, 812 (8th Cir. 2004).

¹¹ *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985) (quoting *In re Wallace*, 19 S.W.2d 625 (Mo. banc 1929)).

¹² 213 S.W.3d 720 (Mo. App., W.D. 2007).

¹³ *Id.* at 725 (quoting *Twentieth Century-Fox Film Corp. v. Lardner*, 216 F.2d 844, 852 (9th Cir. 1954)).

¹⁴ *Brehe*, 213 S.W.3d at 725.

In using his badge to proposition a criminal suspect for sexual favors in exchange for her otherwise unjustified release from custody, Jones abused his authority as a peace officer and breached his duty to the public which he had sworn to “serve and protect.” His actions were contrary to justice, honesty, modesty, and good morals. We find cause for discipline under § 190.165.2(2) and 19 CSR 30-40.365(2)(B).

Jones argues his conviction is not final because he has appealed it. However, an appeal does not render the decision of the trial court any less a conviction.¹⁵ Judgment was final when the court imposed sentence.

Summary

We find cause for discipline against Jones under § 190.165.2(2) and 19 CSR 30-40.365(2)(B). We cancel the hearing.

SO ORDERED on July 23, 2014.

\s\ Mary E. Nelson
MARY E. NELSON
Commissioner

¹⁵ *State v. Nelson*, 9 S.W.3d 687 (Mo. App., E.D. 1999) (judgment was final when trial court imposed sentence).